

IC 29-1-17

Chapter 17. Distribution and Discharge

IC 29-1-17-1

Order of court; perishable property; depreciable property; storage or preservation; income and profits

Sec. 1. (a) At any time during the administration, upon application of the personal representative or any distributee, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee, who consents to it, possession of any specific real or tangible personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative if it is for the best interest of the estate. The court may require the distributee to give security for such return.

(b) At any time during the administration, when it is apparent that the estate is solvent, the court in its discretion may order distribution to the persons entitled thereto of such items of property of the estate as:

- (1) are perishable in nature,
- (2) would materially depreciate in value if distribution were delayed, or
- (3) would necessitate the expenditure of estate funds for storage or preservation if not distributed.

Such distribution may be with or without security or notice to the interested parties as the court may direct.

(c) After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons as the court may direct. Such distribution shall be as conclusive as a decree of final distribution, except that the court may, as provided in section 2(b) of this chapter, modify such decree of partial distribution to the extent necessary to protect the other distributees and claimants, and assure them that they will receive the amount due them on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the partial distribution.

(d) The person to whom possession or distribution has been made under the provisions of this section, shall be entitled to the income and profits from such property.

(Formerly: Acts 1953, c.112, s.1701; Acts 1955, c.258, s.9.) As amended by Acts 1982, P.L.171, SEC.48.

IC 29-1-17-2

Final accounts; decree of final distribution

Sec. 2. (a) After the expiration of the time limit for the filing of

claims, and after all claims against the estate, including state and federal inheritance and estate taxes, have been determined, paid, or provision made therefor, except contingent and unmatured claims which cannot then be paid, the personal representative shall, if the estate is in a condition to be closed, render his final account and at the same time petition the court to decree the final distribution of the estate. Notice of the hearing of the petition shall be given to all interested persons.

(b) In its decree of final distribution, the court shall designate the persons to whom distribution is to be made, and the proportions or parts of the estate, or the amounts, to which each is entitled under the will and the provisions of this probate code, including the provisions regarding advancements, election by the surviving spouse, lapse, renunciation, adjudicated compromise of controversies and retainer. Every tract of real property so distributed shall be specifically described therein. The decree shall find that all state and federal inheritance and estate taxes are paid; and if all claims have been paid, it shall so state; otherwise, the decree shall state that all claims except those therein specified are paid and shall describe the claims for the payment of which a special fund is set aside, and the amount of such fund; if any contingent claims which have been duly allowed are still unpaid and have not become absolute, such claims shall be described in the decree, which shall state whether the distributees take subject to them. If a fund is set aside for the payment of contingent claims, the decree shall provide for the distribution of such fund in the event that all or a part of it is not needed to satisfy such contingent claims. If a decree of partial distribution has been previously made, the decree of final distribution shall expressly confirm it, or, for good cause, shall modify said decree and state specifically what modifications are made.

(c) If a distributee dies before distribution to him of his share of the estate, such share may be distributed to the personal representative of his estate, if there be one; or if no administration on his estate is had and none is necessary according to IC 1971, 29-1-8, the share of such distributee shall be distributed in accordance therewith.

(d) The decree of final distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interest therein, subject only to the right of appeal and the right to reopen the decree. It shall operate as the final adjudication of the transfer of the right, title and interest of the decedent to the distributees therein designated; but no transfer before or after the decedent's death by an heir or devisee shall affect the decree, nor shall the decree affect any rights so acquired by grantees from the heirs or devisees.

(e) Whenever the decree of final distribution includes real property, a certified copy thereof shall be recorded by the personal representative in every county of this state in which any real property distributed by the decree is situated except the county in which the estate is administered. The cost of recording such decree shall be

charged to the estate.

(Formerly: Acts 1953, c.112, s.1702; Acts 1975, P.L.288, SEC.36.)

IC 29-1-17-3

Abatement of distributee shares

Sec. 3. (a) Except as provided in subsection (b) hereof, shares of the distributees shall abate, for the payment of claims, legacies, the allowance provided by IC 29-1-4-1, the shares of pretermitted heirs or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will.
- (2) Property devised to the residuary devisee.
- (3) Property disposed of by the will but not specifically devised and not devised to the residuary devisee.
- (4) Property specifically devised.

A general devise charged on any specific property or fund shall, for purposes of abatement be deemed property specifically devised to the extent of the value of the thing on which it is charged. Upon the failure or insufficiency of the thing on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

(b) If the provisions of the will or the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a) hereof, the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator.

(Formerly: Acts 1953, c.112, s.1703.) As amended by Acts 1981, P.L.260, SEC.2.

IC 29-1-17-4

Abatement of distributee shares; contribution by legatees and devisees

Sec. 4. When real or personal property which has been specifically devised, or charged with a legacy, shall be sold or taken by the personal representative for the payment of claims, general legacies, the allowance provided by IC 29-1-4-1, the shares of pretermitted heirs or the share of the surviving spouse who elects to take against the will, other legatees and devisees shall contribute according to their respective interests to the legatee or devisee whose legacy or devise has been sold or taken, so as to accomplish an abatement in accordance with the provisions of IC 29-1-17-3. The court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

(Formerly: Acts 1953, c.112, s.1704.) As amended by Acts 1981, P.L.260, SEC.3.

IC 29-1-17-5

Advancements

Sec. 5. All questions of advancements made, or alleged to have been made, by an intestate to any heir may be heard and determined by the court before or at the time of the hearing on the petition for final distribution. The amount of every such advancement shall be specified in the decree of final distribution.

(Formerly: Acts 1953, c.112, s.1705.)

IC 29-1-17-6**Indebtedness of distributee; offset**

Sec. 6. When a distributee of an estate is indebted to the estate, the amount of the indebtedness if due, or the present worth of the indebtedness, if not due, may be treated as an offset by the personal representative against any testate or intestate property, real or personal, of the estate to which such distributee is entitled; but such distributee shall be entitled to the benefit of any defense which would be available to him in a direct proceeding for the recovery of such debt.

(Formerly: Acts 1953, c.112, s.1706.)

IC 29-1-17-7**Income received during administration**

Sec. 7. Unless the decedent's will provides otherwise, all income received by the personal representative during the administration of the estate shall constitute an asset of the estate the same as any other asset and the personal representative shall disburse, distribute, account for and administer said income as a part of the corpus of the estate.

(Formerly: Acts 1953, c.112, s.1707.)

IC 29-1-17-8**General legacies; interest**

Sec. 8. General legacies shall not bear interest, unless a contrary intent is indicated by the will.

(Formerly: Acts 1953, c.112, s.1708.)

IC 29-1-17-9**Specific devise; mortgage; pledge; lien**

Sec. 9. When any real or personal property subject to a mortgage, pledge or other lien is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides expressly or by necessary implication that such mortgage be otherwise paid. If a mortgagee receives payment on a claim based upon the obligation secured by such mortgage, the devise which was subject to such mortgage shall be charged with the reimbursement to the estate of the amount of such payment for the benefit of the distributees entitled thereto.

(Formerly: Acts 1953, c.112, s.1709.)

IC 29-1-17-10

Distribution in kind; partition sale; election of distributee; annuity; good faith purchasers or lenders

Sec. 10. (a) When the estate is otherwise ready to be distributed, it shall be distributed in kind to whatever extent it is practicable, unless the terms of the will otherwise provide or unless a partition sale is ordered. Except as provided in subsection (b) of this section, any general legatee may elect to take the value of his legacy in kind, and any distributee, who by the terms of the will is to receive land or any other thing to be purchased by the personal representative, may, if he notifies the personal representative before the thing is purchased, elect to take the purchase price or property of the estate which the personal representative would otherwise sell to obtain such purchase price. Values for the purposes of such distributions in kind shall be determined at a time not more than ten (10) days prior to the filing of the petition for distribution, and if necessary to avoid substantial inequities may be redetermined at any time prior to the order of distribution.

(b) If the terms of the will direct the purchase of an annuity, the person to whom the income thereof shall be directed to be paid shall not have the right to elect to take the capital sum directed to be used for such purchase in lieu of such annuity except to the extent that the will expressly provides that an assignable annuity be purchased. Nothing herein contained shall affect the rights of election by a surviving spouse against a testamentary provision as provided in this article.

(c) If property distributed in kind or a security interest therein is acquired in good faith for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution or release from the personal representative, or is so acquired in good faith by a purchaser from or lender to a transferee of the distributee, the purchaser or lender takes title free of any right of an interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This subsection protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, and a purchaser from or lender to any other distributee or his transferee. To be protected under this subsection, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

(Formerly: Acts 1953, c.112, s.1710.) As amended by Acts 1977, P.L.297, SEC.4.

IC 29-1-17-11

Undivided interests; distribution, partition in kind or by sale, distribution by total fair market value; appointment of

commissioner

Sec. 11. (a) When two (2) or more distributees are entitled to distribution of undivided interests in any real or personal property of the estate, distribution shall be made of undivided interests therein unless the personal representative or one (1) or more of the distributees petition the court not later than the hearing on the petition for final distribution, to make partition thereof. If a petition is filed, the court, after notice is given to all interested persons as the court directs, shall proceed to make partition, allot and divide the property in the same manner as provided by the statutes with respect to civil actions for partition, so that each party receives property of a value proportionate to the party's interest in the whole. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one (1) party. If partition is made in kind, the court may appoint a commissioner to partition the property, who shall have the powers and perform the duties of a commissioner in civil actions for partition, and the court shall have the same powers with respect to the commissioner's report as in civil actions. If equal partition cannot be had between the parties without prejudice to the rights or interests of some, partition may be made in unequal shares and by awarding judgment for compensation to be paid by one (1) or more parties to one (1) or more of the others. Any two (2) or more parties may agree to accept undivided interests. Any sale under this section shall be conducted and confirmed in the same manner as other probate sales. The expenses of the partition, including reasonable compensation to the commissioner, shall be equitably apportioned by the court among the parties. Each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party.

(b) If a distribution of particular assets of a decedent is to be made to two (2) or more distributees that are entitled to receive fractional shares in the assets, the decedent's personal representative may, under an agreement among the distributees, distribute the particular assets without distributing to each distributee a pro rata share of each asset. However, the personal representative shall:

- (1) distribute to each distributee a pro rata share of the total fair market value of all the particular assets as of the date of distribution; and
- (2) divide the assets in a manner that results in a fair and equitable division among the distributees of any capital gain or loss on the assets.

(Formerly: Acts 1953, c.112, s.1711.) As amended by P.L.265-1989, SEC.1.

IC 29-1-17-12**Unclaimed estate assets; disposition procedures; escheat; time limit; exceptions**

Sec. 12. (a) If after reasonable search, satisfactory to the court, there shall be no known heir of the decedent, all of his net estate not

disposed of by will shall be ordered paid to the state treasurer to become a part of the common school fund, subject to the further provisions of this section.

(b) If any heir, distributee, advisee, or claimant cannot be found after reasonable search, satisfactory to the court, the personal representative shall sell the share of the estate to which he is entitled, pursuant to an order of court first obtained, and pay the proceeds to the clerk of the court for use and benefit of the person or persons thereafter determined to be entitled thereto according to law.

(c) When the personal representative shall pay any money to the state treasurer or clerk of the court pursuant to this section, he shall take a receipt therefor and file it with the court with the other receipts filed in the proceeding. Such receipt shall be sufficient to discharge the personal representative in the same manner and to the same extent as though such distribution or payment were made to a distributee or claimant entitled thereto.

(d) The moneys received by the state treasurer pursuant to the provisions of this section shall be paid to the person entitled on proof of his right thereto or in the case of an absentee, to the receiver of such absentee's property, or, if the state treasurer refuses or fails to pay because he is doubtful as to his duties in the premises, such person may apply to the court in which the estate was administered, whereupon the court upon notice to the state treasurer may determine the person entitled thereto and order the treasurer to pay the same accordingly. No interest shall be allowed thereon and such distributee or claimant shall pay all costs and expenses incident to the proceedings. If such proceeds are not paid or no application is made to the court within seven (7) years after such payment to the state treasurer, no recovery thereof shall be had.

(e) This section does not apply to stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-7-1.

(Formerly: Acts 1953, c.112, s.1712.) As amended by Acts 1981, P.L.106, SEC.4.

IC 29-1-17-13

Supplemental reports; discharge; limitation of actions

Sec. 13. Upon the filing of a supplemental report of distribution together with receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release from the duties of personal representative and shall operate as a bar to any suit including suits by persons under disability, against the personal representative and his sureties except suits which are commenced within one (1) year from the date of the discharge and are based solely upon alleged mistake, fraud or wilful

misconduct on the part of the personal representative.
(Formerly: Acts 1953, c.112, s.1713.)

IC 29-1-17-14

After discovered property; reopening estate; inheritance tax

Sec. 14. (a) If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the court, upon the petition of the discharged personal representative or any person interested in the estate and, without notice or upon such notice as it may direct, may order that said estate be reopened. It may reappoint the personal representative or appoint another personal representative to administer such property or perform such act as may be deemed necessary. Unless the court shall otherwise order, the provisions of this article as to an original administration shall apply to the proceedings had in the reopened administration so far as may be, but no claim which is already barred can be asserted in the reopened administration.

(b) Whenever any solvent estate has been closed, and it thereafter appears that any assets thereof have not been fully administered upon, the court may, if it appears practicable, order such assets distributed to, or title vested in, the persons entitled thereto after compliance with requirements as to an inheritance tax imposed under IC 6-4.1, in lieu of reopening the estate as provided in the preceding subsection. No additional notice of such proceedings shall be necessary unless so ordered by the court.

(Formerly: Acts 1953, c.112, s.1714.) As amended by Acts 1982, P.L.171, SEC.49; P.L.254-1997(ss), SEC.29.

IC 29-1-17-15 Repealed

(Repealed by Acts 1973, P.L.289, SEC.4.)

IC 29-1-17-15.1

Petition to determine heirs of estate; contents; notice; hearing; decree

Sec. 15.1. (a) Whenever any person has died leaving property or any interest therein and no general administration has been commenced on his estate in this state, nor has any will been offered for probate in this state, within five (5) months after his death, any person claiming an interest in such property as heir or through an heir may file a petition in any court which would be of proper venue for the administration of such decedent's estate, to determine the heirs of said decedent and their respective interests as heirs in the estate.

(b) The petition shall state:

- (1) The name, age, domicile and date of death of the decedent;
- (2) The names, ages and residence addresses of the heirs, so far as known or can with reasonable diligence be ascertained;
- (3) The names and residence addresses of any persons claiming

any interest in such property through an heir, so far as known or can be ascertained by reasonable diligence;

(4) A particular description of the property with respect to which such determination is sought;

(5) The net value of the estate.

(c) Upon the filing of the petition, the court shall fix the time for the hearing thereof, notice of which shall be given to:

(1) All persons known or believed to claim any interest in the property as heir or through an heir of the decedent;

(2) All persons who may at the date of the filing of the petition be shown by the records of conveyances of the county in which any real property described in such petition is located to claim any interest therein through the heirs of the decedent; and

(3) Any unknown heirs of the decedent.

Such notice shall be given by publication and, in addition personal notice by registered mail shall be given to every such person whose address is known to the petitioner. Upon satisfactory proofs including proof of compliance with inheritance tax laws of this state the court shall make a decree determining the heirs of said decedent and their respective interests as heirs in said property.

(d) A certified copy of the decree shall be recorded at the expense of the petitioner in each county in which any real property described therein is situated except the county in which the decree is entered, and shall be conclusive evidence of the facts determined therein as against all parties to the proceedings.

(Formerly: Acts 1973, P.L.289, SEC.2; Acts 1975, P.L.288, SEC.37.)

IC 29-1-17-16

Rules of equity; relief not limited

Sec. 16. The limitations provided for in IC 29-1-1-21 and section 13 of this chapter shall not deprive any interested person of the relief now afforded him under the rules of equity.

(Formerly: Acts 1953, c.112, s.1716.) As amended by Acts 1982, P.L.171, SEC.50.